IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 4409 OF 2004

Ashraf Abdul Kadar Shaikh ... Applicant

versus

State of Maharashtra ... Respondent

...

Mr. Sudeep R. Pasbola, for the Applicant.

Mr. V.B. Konde Deshmukh, A.P.P., for the Respondent.

...

CORAM : A.M.KHANWILKAR,J.

19th October 2004

P.C.:

. Heard Counsel for the parties. Perused the record. The Applicant has been arrested in connection with CR. No. I-151/2004 registered with Mira-Bhayander Police Station. The prosecution case is that the Applicant participated in the commission of crime related to incident dated 30th April 2004 when he along with two other accused entered the shop of deceased Abdul Khalid and on account of previous

enmity, in which the said Abdul Khalid was assaulted by Imtiaz, when the Applicant instigated the assailant and himself assaulted the deceased with fists and kicks. This version is supported by the statements of prosecution witnesses. The argument before this Court is that the prosecution witnesses who support this version are interested witnesses, whereas the version given by the independent witnesses excludes the possibility of participation of the Applicant in the commission of the said offence. Inasmuch as the said independent witnesses have stated that only two persons were seen to be involved in the commission of offence. The Court below has observed that there are discrepancies in the evidence, but that cannot be the basis for grant of bail at this stage, as, at this stage, it is not possible to appreciate evidence on record. I am in agreement with the conclusion reached by the Court below. Assuming that the Applicant is justified in contending that there is discrepancy in the version of the prosecution; however, in the present case, antecedents of the Applicant have been brought to my notice, in that, the Applicant was convicted for offence punishable under N.D.P.S.Act and has suffered

imprisonment for 10 years. Besides, there is already a pending case against the Applicant under section 428-B and 120-B of I.P.C. Moreover, at least two clinching circumstances have been relied on by the learned A.P.P. that N.C. complaint was lodged by the deceased just before the occurrence of incident and the blood stained clothes have been recovered from the Applicant. Having regard to the antecedents of the Applicant and having regard to the materials on record, not a case for grant of bail. Hence, this application is rejected. However, the trial Court is directed to expedite the trial and finally dispose of the same preferably by the end of June 2005.

(A.M.KHANWILKAR,J.)